

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 243 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE S.M.SONI and
MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF INCOME TAX

Versus

M/S.CHHOTUBHAI J. PATEL & CO.

Appearance:

Mr.Mihir Thakore with Mr.M.R.Shah for
MR RP BHATT for Petitioner
Mr.D.A.Mehta, Mr.R.K.Patel & Mr.B.D.Karia
for MR KC PATEL for Respondent

CORAM : MR.JUSTICE S.M.SONI and
MR.JUSTICE Y.B.BHATT

Date of decision: 26/09/96

ORAL JUDGEMENT (Per Soni J.)

Following two questions are referred to this court, which arise out of the order of the Appellate Tribunal in ITA No.243(Ahd.)/78-79 decided on 30.10.79:

- "1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in law in deleting the entire interest addition of Rs.1,08,000/- paid by the assessee to the children of Raja Chandrachur Prasad Singh Deo ?
2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal has been right in law in confirming the order of A.A.C. in deleting the addition of messing expenses amounting to Rs.3,33,450/- and tea - pan expenses amounting to Rs.1,84,055/-? "

So far as the first question is concerned, Revenue has withdrawn the same and this court (Coram: S.Nainar Sundram C.J. & R.K.Abichandani J.) has allowed to withdraw the same. However, by mistake, both the questions were withdrawn, though it was meant for withdrawal of question no.1 only. Thereafter, by the order in M.C.A. No.79/93, the position was clarified and question no.2 has now only revived. Question no.1, therefore, need not be answered.

Question no.2 is also now covered by the judgment of the Supreme Court in the case of Commissioner of Income tax vs. Patel Brothers and Co. Ltd. & Ors. reported in 215 ITR 165. There, the Supreme Court has held that "a bare necessity, like an ordinary meal, is essential and indispensable and, therefore, is not entertainment. Where such a bare necessity is offered, it is hospitality not entertainment. Unless the definition of entertainment includes hospitality, the ordinary meaning of "entertainment" cannot include hospitality". Revenue has disallowed the claim holding it to be an entertainment expenditure. However, the expenditure pertained to tea, pan and messing provided to its employees in discharge of their normal duties. Therefore, the question no.2 being covered under above Supreme Court judgment, the question no.2 is required to be answered in the affirmative in favour of the assessee. Reference accordingly stands disposed of. No order as to costs.
